

Translation

PATENT COOPERATION TREATY

PCT/DE2003/001215



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference Ed 174 02 WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/DE2003/001215	International filing date (day/month/year) 11 April 2003 (11.04.2003)	Priority date (day/month/year) 12 April 2002 (12.04.2002)
International Patent Classification (IPC) or national classification and IPC B60J 7/14		
Applicant EDSCHA CABRIO-DACHSYSTEME GMBH		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 6 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 04 November 2003 (04.11.2003)	Date of completion of this report 07 May 2004 (07.05.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/DE2003/001215

## I. Basis of the report

### 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
 pages \_\_\_\_\_ 1-19 \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, as amended (together with any statement under Article 19  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_ 1-37 \_\_\_\_\_, filed with the letter of \_\_\_\_\_ 15 April 2004 (15.04.2004)
- ☒ the drawings:  
 pages \_\_\_\_\_ 1/27-27/27 \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
 pages \_\_\_\_\_, as originally filed  
 pages \_\_\_\_\_, filed with the demand  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

### 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

- These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

### 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

### 4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

### 5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	1-16, 30-33	YES
	Claims	17-29, 34-37	NO
Inventive step (IS)	Claims	1-16, 30-33	YES
	Claims	17-29, 34-37	NO
Industrial applicability (IA)	Claims	1-37	YES
	Claims		NO

**2. Citations and explanations**

Reference is made to the following documents:

- D1: DE 198 05 477 C (DAIMLER CHRYSLER AG) 5 August 1999 (1999-08-05)
- D2: DE 199 57 427 C (WEBASTO VEHICLE SYS INT GMBH) 22 March 2001 (2001-03-22)
- D3: DE 199 34 673 C (DAIMLER CHRYSLER AG) 25 January 2001 (2001-01-25)
- D4: US 2001/040385 A1 (OBENDIEK KLAUS) 15 November 2001 (2001-11-15)
- D5: DE 44 35 222 C (WEBASTO KAROSSERIESYSTEME) 2 November 1995 (1995-11-02)
- D6: DE 100 06 290 C (WEBASTO VEHICLE SYS INT GMBH) 31 May 2001 (2001-05-31)
- D7: DE 101 08 493 A (EDSCHA CABRIO DACHSYSTEME GMBH) 13 September 2001 (2001-09-13)
- D8: DE 100 39 683 A (KARMANN GMBH W) 7 March 2002 (2002-03-07)

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1. Independent claim 11.1 Novelty

D1, which is considered to be the closest prior art, discloses:

- a folding top for a cabriolet vehicle, comprising a first roof portion (forward roof portion 4), a second roof portion (rear roof portion 5) and a positive control system, where the first roof portion and the second roof portion are driven by means of the positive control system.

The subject matter of the present claim 1 differs therefrom by virtue of the fact that:

- the positive control system comprises a mechanical control device which retards the movement of the second roof portion relative to the movement of the first roof portion.

The subject matter of the present claim 1 therefore appears to satisfy the criterion referred to in PCT Article 33(2), because the subject matter of independent claim 1 is novel over the prior art as defined in the Regulations (PCT Rule 64.1 to 64.3).

1.2 Inventive step

Proceeding from the cited prior art, the problem addressed by the present invention can therefore be considered to be that of developing a folding top for a cabriolet vehicle, as defined in the preamble of independent claim 1, in such

a way that the mechanical control device eliminates the need for additional drives and thereby reduces costs and the potential for malfunction.

The solution as defined in claim 1 does not, however, appear to be known *per se* from any of the documents under consideration in this procedure or to be suggested by the prior art as a whole.

The subject matter of the present claim 1 therefore appears to satisfy the criterion referred to in PCT Article 33(3), because the subject matter of claim 1 appears to involve an inventive step (PCT Rule 65.1 and 65.2).

## 2. Dependent claims 2-16, 30-33

Dependent claims 2-16, 30-33, which concern further improvements of the invention, likewise appear to satisfy the requirements of PCT Article 33(2) to (4).

## 3. Independent claim 17

### 3.1 Novelty

D1 discloses:

- a folding top for a cabriolet vehicle, where the first roof portion (forward roof portion 4) and the second roof portion (rear roof portion 5) are accommodated on a main guide frame (main guide rods 6, 7), the main guide frame being movably mounted on a vehicle body of the vehicle (see attachment points 19, 20), the first roof portion (forward roof portion 4) being movable relative to the main guide frame (main guide

rods 6, 7) (see intermediate lever 16).

The present application does not therefore satisfy the criterion referred to in PCT Article 33(2), because the subject matter of the claim is not novel over the prior art as defined in the Regulations (PCT Rule 64.1 to 64.3).

4. Dependent claims 18-29, 34-37

Dependent claims 18-29, 34-37, which concern further improvements of the invention as defined in claim 17, likewise fail to satisfy the PCT requirements, since they can satisfy these requirements only if the claim to which they are appended also does so. The features of the claims listed also appear to be known, at least *per se*, from the cited documents. They do not therefore include any essential measures that could in any way establish novelty, and/or constitute an inventive step.